



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 10009, Richmond, Virginia 23240

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www.deq.state.va.us

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Robert G. Burnley
Director

(804) 698-4000
1-800-592-5482

May 20, 2004

Blue Ridge Shadows, LLC
c/o Kent Ware
Patton Harris Rust and Associates
P.O. Box 27
McGaheysville, VA 22840

RE: VWP Individual Permit Number 03-0251
Blue Ridge Shadows, Warren County Virginia
Final VWP Individual Permit

Dear Mr. Ware:

Pursuant to the Virginia Water Protection (VWP) Permit Program Regulation 9 VAC 25-210-10 and § 401 of the Clean Water Act Amendments of 1977, Public Law 95-217, the Department of Environmental Quality (DEQ) has enclosed the original VWP individual permit for the Blue Ridge Shadows Golf Course project. The proposed project results in the withdrawals of a maximum daily withdrawal of 0.36 million gallons from Crooked Run in Warren County Virginia..

The provisions and conditions contained therein according to § 401(a)(1) of the Clean Water Act requires that:

“Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge in the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act.”

This permit is valid for 15 years from the date of issuance. Re-issuance of the permit will be necessary if any portion of the authorized activities, including the water withdrawal are expected to continue.

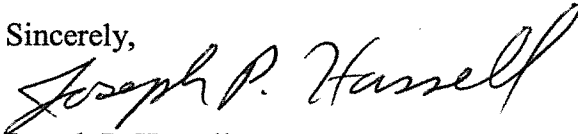
Mr. Kent Ware
May 20, 2004
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As provided by Rule 2A:2 of the Supreme Court of Virginia, you have 30 calendar days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period. Refer to Part 2A of the Rules of the Supreme Court of Virginia for additional requirements governing appeals from administrative agencies.

Alternatively, any owner under §§62.1-44.16, 62.1-44.17 and 62.1-44.19 of the State Water Control Law aggrieved by any action of the board taken without a formal hearing, or by inaction of the board, may demand in writing a formal hearing of such owner's grievance, provided a petition requesting such hearing is filed with the board. Said petition must meet the requirements set forth in §1.23(b) of the board's Procedural Rule Number 1 (9 VAC 25-230-10 et seq. of the Virginia Administrative Code). In cases involving actions of the board, such petition must be filed within 30 calendar days after notice of such action is mailed to such owner by certified mail.

If you have any questions, please contact me at (804) 698-4072..

Sincerely,



Joseph P. Hassell
Environmental Program Manager

Enclosures: Permit Cover Page, Part I – Special Conditions, Part II – General Conditions

cc: Ron Stouffer, U.S. Army Corps of Engineers
Justin Worrell, Virginia Marine Resources Commission
VWP permit file



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VWP Individual Permit Number : 03-0251

Effective Date: May 20, 2004

Expiration Date: May 20, 2019

VIRGINIA WATER PROTECTION PERMIT ISSUED PURSUANT TO THE STATE WATER CONTROL LAW AND SECTION 401 OF THE CLEAN WATER ACT

Based upon an examination of the information submitted by the owner and in compliance with § 401 of the Clean Water Act as amended (33 USC 1251 et seq.) and the State Water Control Law and regulations adopted pursuant thereto, the State Water Control Board (board) has determined that there is a reasonable assurance that the activity authorized by this permit, if conducted in accordance with the conditions set forth herein, will protect instream beneficial uses and will not violate applicable water quality standards. The board finds that the effect of the impact, together with other existing or proposed impacts to wetlands, will not cause or contribute to a significant impairment to state waters or fish and wildlife resources.

Permittee: Blue Ridge Shadows, LLC

Address: P.O. Box 27 McGaheysville, VA 22840

Activity Location: Crooked Run just north of Front Royal and adjacent to Route 522/340 in Warren County

Activity Description: The construction of a diversion pond on a tributary of Crooked Run and the construction and operation of a waters supply intake on Crooked Run for the purpose of irrigating a golf course.

The permitted activity shall be in accordance with this Permit Cover Page, Part I - Special Conditions and Part II - General Conditions.

Robert G. Burnley
Director, Department of Environmental Quality

May 20, 2004
Date

PART I - SPECIAL CONDITIONS

A. Authorized Activities

1. In accordance with the Joint Permit Application for "Blue Ridge Shadows" dated August 4, 2003; and deemed complete on January 6, 2004, this permit authorizes the construction and operation of two irrigation intakes, one on Crooked Run and one on a tributary to Crooked Run at locations as indicted in the application.
2. The permittee shall notify the Department of Environmental Quality, Office of Water Permits of any additional impacts to State waters, including wetlands, associated with this project. These impacts shall be subject to DEQ individual permit review and may require modification of this permit as well as mitigation.
3. The project activities described in the Joint Permit Application for "Blue Ridge Shadows" shall be adhered to during the life of this permit.
4. This permit is valid for a maximum of fifteen (15) years from the date of issuance. Reissuance of the permit will be necessary for water withdrawals to continue.

B. Construction Conditions

1. All utility line work in State waters shall be performed in such a manner as to minimize disturbance, and the area shall be returned to its original contours and stabilized immediately upon completion of the utility line.
2. All dredging and/or filling activities shall be performed so as to minimize turbidity increases of downstream waters.
3. All storm water management/best management practice facilities on the project site shall be maintained to prevent the discharge of contaminants to State waters, for which they are designed to treat; and to comply with the State's Water Quality General Standard (9 VAC 25-260-20 A).
4. All storm water detention basins shall be built in accordance with the Department of Conservation and Recreation (DCR) Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
5. Wet or uncured concrete shall be strictly prohibited from entry into State waters.
6. No machinery may enter flowing waters in connection with this project.
7. All fill material shall be clean and free of contaminants in toxic concentrations or amounts in accordance with all Department of Environmental Quality Regulations.
8. All construction and demolition activities associated with this project shall be accomplished in such a manner that construction and/or waste materials do not enter State waters.

9. Erosion and sedimentation controls shall be designed in accordance with the DCR Virginia Erosion and Sediment Control Handbook, Third Edition, 1992. These controls shall be placed prior to clearing and grading, and maintained in good working order to minimize impacts to State waters. These controls shall remain in place until the area stabilizes.
10. Within seven (7) days after final grade is achieved, all denuded areas shall be properly stabilized in accordance with the DCR Virginia Erosion and Sediment Control Handbook, Third Edition, 1992.
11. At crossings of perennial streams, pipes and culverts shall be countersunk a minimum of six (6) inches to provide for the re-establishment of a natural stream bottom and a low flow channel. Where culverts cannot be countersunk, open bottom culverts shall be used.
12. All State waters affected by a road crossing shall be restored to their original elevations immediately following the construction of that particular crossing.
13. The construction or work authorized by this VWP permit shall be executed in a manner so as to minimize any adverse impact on instream beneficial uses as defined in § 62.1-10 (b) of the Code of Virginia.
14. Immediately downstream of the construction area, Water Quality Standards (9 VAC 25-260-50 et seq.) shall not be violated as a result of the construction activities.

C. Water Withdrawal and Intake Design Conditions

1. After initial grow out of the golf course the maximum combined water withdrawal from the Crooked Run shall not exceed not exceed 4.1 million gallons in any month. Initial grow out shall be deemed over at the beginning of the second season after the first season in which irrigation water is used on the golf course.
2. The maximum daily withdrawal from the Crooked Run intake shall not exceed 0.36 million gallons
3. After initial grow out of the golf course the maximum annual water withdrawal from the Crooked Run intake shall not exceed 15.2 million gallons.
4. Water from the storm water detention pond on the unnamed tributary to may be diverted to the four golf course irrigation ponds without condition.
5. The maximum installed pump capacity at Crooked Run shall not exceed 250 gallons per minute.
6. Water from the stream intake on Crooked Run may not be pumped if the streamflow at the closest surrogate streamflow gage, USGS gage number 01614830, Opequon Creek near Stephens City is flowing at less than 2.5 cubic feet second. If the Opequon Creek near Stephens City gage is inoperable, the permittee shall monitor the Opequon Creek near Berryville gage and shall not withdraw water from Crooked Creek if the flow at the Berryville gage is less than 9.4 cfs.

7. Between June 1st and October 31st, on each day that water is pumped from Crooked Creek the permittee shall monitor and record the following information: the date, the time, the provisional flow of the Opequon Creek near Stephens City, whether the provisional flow is greater than or equal to 2.5 cfs (yes or no) and whether any water is pumped from Crooked Creek (yes or no). Note the provisional streamflow data is available at the following URL address <http://waterdata.usgs.gov/va/nwis/current/?type=flow>
8. The permittee shall report water use in compliance with the Water Withdrawal Reporting Regulation 9 VAC 25-200 et seq.
9. Water may be withdrawn from Crooked Run and the storm water pond on a tributary of Crooked Run only for the purpose of irrigating the associated 18 hole golf course.
10. The maximum screen size opening of the intakes shall not be wider than 1.0 mm.
11. The maximum screen intake velocities shall not be faster than 2.0 feet per second.

D. Mandatory Water Conservation Conditions

In the event that the Governor or the Virginia Drought Coordinator declares a drought emergency in the Shenandoah Drought Evaluation Region, defined as Rockingham, Augusta, Page, Shenandoah, Warren, Fredrick and Winchester Counties and Winchester, then the permittee shall immediately upon notification by the Department of Environmental Quality implement the following mandatory conservation measures:

- Tees and greens may be irrigated between the hours of 9:00 p.m. and 10:00 a.m. at the minimum rate necessary.
- Localized dry areas may be irrigated with a hand held container or hand held hose equipped with an automatic shutoff device at the minimum rate necessary.
- Greens may be cooled by syringing or by the application of water with a hand held hose equipped with an automatic shutoff device at the minimum rate necessary.
- Fairways may be irrigated between the hours of 9:00 p.m. and 10:00 a.m. at the minimum rate necessary not to exceed one inch of applied water in any ten-day period.
- Fairways, tees and greens may be irrigated during necessary overseeding or resodding operations in September and October at the minimum rate necessary. Irrigation rates during this restoration period may not exceed one inch of applied water in any seven-day period.
- Newly constructed fairways, tees and greens and areas that are re-established by sprigging or sodding may be irrigated at the minimum rate necessary not to exceed one inch of applied water in any seven-day period for a total period that does not exceed 60 days.
- Fairways, tees and greens may be irrigated without regard to the restrictions listed above so long as:
- The only water sources utilized are water features whose primary purpose is stormwater management,
- Any water features utilized do not impound permanent streams,

- During declared Drought Emergencies these water features receive no recharge from other water sources such as ground water wells, surface water intakes, or sources of public water supply, and,
- All irrigation occurs between 9:00 p.m. and 10:00 a.m.
- All allowed golf course irrigation must be applied in a manner to assure that no runoff, puddling or excessive watering occurs.
- Rough areas may not be irrigated.

E. Reporting

1. By November 1st of each year in which water is pumped from Crooked Creek, the permittee shall file a report demonstrating compliance with conditions C.6., C.7., and C.8..
2. Written communications and reports required by this permit shall be submitted with the appropriate Virginia Water Protection Permit Number to the DEQ at the following address: Department of Environmental Quality, Office of Water Permits, VWPP Program, P.O. Box 10009, Richmond, Virginia 23240. All reports required by this permit and other information requested by DEQ shall be signed by the applicant or a person acting in the applicant's behalf, with the authority to bind the applicant. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above; and
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, or position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
 - c. If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization shall be submitted to DEQ prior to or together with any separate information, or applications to be signed by an authorized representative.
3. All submittals required by this permit shall contain the following signed certification statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violation.

Part II – General Conditions

A. Duty to Comply

The permittee shall comply with all conditions of the VWP permit. Nothing in this permit shall be construed to relieve the permittee of the duty to comply with all applicable federal and state statutes, regulations and prohibitions. Any VWP permit violation is a violation of the law, and is grounds for enforcement action, VWP permit termination, revocation, modification, or denial of an application for a VWP permit extension or reissuance.

B. Duty to Cease or Confine Activity

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a VWP permit has been granted in order to maintain compliance with the conditions of the VWP permit.

C. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment.

D. VWP Permit Action

1. A VWP permit may be modified, revoked and reissued, or terminated as set forth in 9 VAC 25-210 et seq.
2. If a permittee files a request for VWP permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the VWP permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VWP permit. If the permittee wishes to continue an activity regulated by the VWP permit after the expiration date of the VWP permit, the permittee must apply for and obtain a new VWP permit or comply with the provisions of 9 VAC 25-210-185.
3. VWP permits may be modified, revoked and reissued or terminated upon the request of the permittee or other person at the board's discretion, or upon board initiative to reflect the requirements of any changes in the statutes or regulations, or as a result of VWP permit noncompliance as indicated in subsection A above, or for other reasons listed in 9 VAC 25-210-180.

E. Inspection and Entry

Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private, and have access to, inspect and copy any records that must be kept as part of the VWP permit conditions;
2. Inspect any facilities, operations or practices (including monitoring and control equipment) regulated or required under the VWP permit, and
3. Sample or monitor any substance, parameter or activity for the purpose of ensuring compliance with the conditions of the VWP permit or as otherwise authorized by law.

F. Duty to Provide Information

1. The permittee shall furnish to the board any information which the board may request to determine whether cause exists for modifying, revoking, reissuing or terminating the VWP permit, or to determine compliance with the VWP permit. The permittee shall also furnish to the board, upon request, copies of records required to be kept by the permittee.
2. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as required by the board prior to commencing construction.

G. Monitoring and Records Requirements

1. Monitoring of parameters, other than pollutants, shall be conducted according to approved analytical methods as specified in the VWP permit. Analysis of pollutants will be conducted according to 40 CFR Part 136 (2000), Guidelines Establishing Test Procedures for the Analysis of Pollutants.
2. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart or electronic recordings for continuous monitoring instrumentation, copies of all reports required by the VWP permit, and records of all data used to complete the application for the VWP permit, for a period of at least three years from the date of the expiration of a granted VWP permit. This period may be extended by request of the board at any time.
4. Records of monitoring information shall include:
 - a. The date, exact place and time of sampling or measurements;
 - b. The name of the individuals who performed the sampling or measurements;
 - c. The date and time the analyses were performed;

- d. The name of the individuals who performed the analyses;
- e. The analytical techniques or methods supporting the information such as observations, readings, calculations and bench data used;
- f. The results of such analyses; and
- g. Chain of custody documentation.

H. Reopener

This permit may be reopened to modify conditions to meet new regulatory standards duly adopted by the board. Cause for reopening a permit includes, but is not limited to when the circumstances on which the permit was based have materially and substantially changed, or special studies conducted by the board or the permittee show material and substantial change, since the time the permit was issued and thereby constitute cause for permit modification or revocation and re-issuance.

I. Compliance with State and Federal Law

Compliance with this permit constitutes compliance with the VWP permit requirements of the State Water Control Law. Nothing in this VWP permit shall be construed to preclude the institution of any legal action under or relieve the permittee from any responsibilities, liabilities, or other penalties established pursuant to any other state law or regulation or under the authority preserved by § 510 of the Clean Water Act.

J. Property rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize injury to private property or any invasion of personal rights or any infringement of federal, state or local law or regulation.

K. Transferability

Except as provided for under automatic transfer, a permit shall be transferred only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new permittee. A permit shall be automatically transferred to a new permittee if:

1. The current permittee notifies the board within 30 days of the proposed transfer of the title to the facility or property;
2. The notice to the board includes a written agreement between the existing and proposed permittee containing a specific date of transfer of permit responsibility, coverage and liability to the new permittee, or that the existing permittee will retain such responsibility,

coverage, or liability, including liability for compliance with the requirements of any enforcement activities related to the permitted activity; and

3. The board does not within the 30-day time period notify the existing permittee and the new permittee of its intent to modify or revoke and reissue the VWP permit.

L. Civil and criminal liability

Nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

M. Unauthorized discharge of pollutants

Except in compliance with this permit, it shall be unlawful for the permittee to dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands, or on or after October 1, 2001, conduct the following activities in a wetland:

1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions;
2. Filling or dumping;
3. Permanent flooding or impounding; or
4. New activities that cause significant alteration or degradation of existing wetland acreage or functions.

N. Severability

The provisions of this permit authorization are severable.

O. VWP Permit Extension

Any permittee with an effective VWP permit for an activity that is expected to continue after the expiration date of the VWP permit, without any change in the activity authorized by the VWP permit, shall submit written notification requesting an extension. The permittee must file the request prior to the expiration date of the VWP permit. Under no circumstances will the extension be granted for more than 15 years beyond the original effective date of the VWP permit. If the request for extension is denied, the VWP permit will still expire on its original date and, therefore, care shall be taken to allow for sufficient time for the board to evaluate the extension request and to process a full VWP permit modification, if required.

